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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,243	10/16/2001	Peter F. Reile	FSHR-042/00US 063518-2286	2235
22903 7590 10/08/2008 COOLEY GODWARD KRONISH LLP ATTN: PATENT GROUP Suite 1100 777 - 6th Street, NW WASHINGTON, DC 20001				
EXAMINER				
DEODHAR, OMKAR A				
ART UNIT		PAPER NUMBER		
3714				
MAIL DATE		DELIVERY MODE		
10/08/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/977,243

Applicant(s)

REILE ET AL.

Examiner

OMKAR A. DEODHAR

Art Unit

3714

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): Section 112 rejections.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-19, 21-28, 31-41, 43-55 and 57-65.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Corbett B. Coburn/
Primary Examiner, Art Unit 3714

Continuation of 11, does NOT place the application in condition for allowance because: Applicant's amendment, in light of the arguments, would overcome the section 112 rejection. However, the amendment fails to overcome the prior art rejections for the following reasons: First, Applicant argues that the references (specifically Hainey) do not teach the claimed "second interactive tool being one of activated or inactivated based on the selection of said one of said plurality of drawing activities." Applicant admits that Hainey teaches that selection of the icons will bring up menus & submenus for selection, (Page 16). Thus, the concept of activating tools (menus & submenus in an application) based on selection of an activity (selection of an icon while using the device) is taught by Hainey. Examiner will concede that the specific claim limitation is not taught, however, it would have been obvious in view of Hainey's disclosure. Such a minor modification to Hainey's interactive device would have been well within the level of ordinary skill in the art at the time of Applicant's invention. Next, Applicant argues that the references do not teach a full screen erase tool that includes a plurality of selectable animated full-screen erase options. Examiner respectfully disagrees. Among the prior art relied upon are Microsoft's Office & Paint applications. A user that clicks the "Edit" button, selects the "select all" option and then presses the "delete button" discloses the claim limitation. Further, instead of selecting the "select all" option, a user could select the "cut" option from the "Edit" menu. This teaches the claimed plurality of options. Next, Applicant argues that while Hainey may teach that the memory cartridge can add additional lessons for the user to select (second activity applications), Hainey does not teach an interactive tool that does not interact with a first activity retrieved from a different memory. Configuring tools to interact & not interact with other tools is well within the level of ordinary skill in the art & would have been obvious at the time of Applicant's invention. Next, Applicant argues that the prior art relied upon does not teach varying a characteristic associated with an interactive tool on a toolbar based on the selection of a starter scene. Examiner respectfully disagrees. Paint shop Pro 5 (by Clark) teaches selection of different scenes - the user can customize the application to select between a plurality of scenes & one may designate a scene as a "starter scene". Consequently, while Applicant's amendment would overcome the section 112 rejections, the prior art rejections would be maintained.